

TOWN OF CUSHING  
PLANNING BOARD  
Minutes of Meeting  
May 2, 2007  
Approved 6/6/07

**Board Present:** Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, CEO Scott Bickford and Recording Secretary Deborah Sealey

**Absent:** None

**1. Call to Order:** Chairman Remian called the meeting to order at 7:00 P.M. and took a roll call.

**2. Minutes of 4/11/07:** The members requested three minor corrections to the 4/11/07 minutes.

**ACTION:** Mrs. Kalloch made a motion, seconded by Mr. Cobey, to accept the minutes as corrected.  
Carried 5-0-0

**3. 4/26/07 Site Walk Report:** Mr. Remian noted that the meeting regarding Lot 26 and the common area of Robbins Mountain Subdivision had been held. Another meeting was held for the Harlows, Dan Staples and the Army Corps of Engineers to look at the float

**ACTION:** Mr. Muddle made a motion, seconded by Mrs. Kalloch, to approve the minutes of the 4/26/07 site walk.  
Carried 5-0-0

**4. Correspondence:** Chairman Remian said CEO Bickford had received a letter from James Tower (Cushing Holdings, LLC), dated 4/20/07, containing 2 sets of drawings and a letter from Machias Savings Bank. The Board had a copy of a letter, dated 5/2/07, to Jay Clement of the Army Corps of Engineers from Cushing Holdings, LLC. The Board was also in receipt of an email from Rich Baker of the DEP, dated 4/26/07.

**5. Meduncook Plantation Subdivision, Review of Reconsideration on Lot 26:** *Mr. Cobey stepped down because he was not present at the discussions that terminated in the decision now being reconsidered.* Mr. Remian called for discussion and Mr. Ellis stated that the Board had said it would discuss Rich Baker's proposed route to Lot 26. Mrs. Kalloch said she thought the alternate route, which was the continuation of the driveway to Lot 8 or 9, had to be outside Resource Protection [RP] to qualify as an alternative. This one was clearly inside RP, she said, so it did not pass the test. (The Board looked at the proposed route on Mr. Ellis' copy of the site plan, where he had drawn it in at the site walk with Mr. Baker's help.) Mr. Remian quoted Mr. Baker as saying that the least intrusive route should be considered, but Mr. Ellis contended that the regulations did not direct the Board to look for the "least intrusive" route; he assumed it was the Board's job to see if the route proposed by the applicant met the regulations.

Mr. Muddle said Mr. Baker had told him, "I'm not the Board and the Board has to decide which alternative is best." Mr. Muddle added that it look like Mr. Baker's suggested route went through two septic systems and cut through Lots 9 & 10. He stated that Mr. Baker's route was nearly as close to the shore as the designated route and limited the locations for test pits and buildings. Mr. Muddle said he did not like those aspects of the route, as it seemed intrusive to Lots 9 & 10. Mrs. Kalloch said there were steep pitches along the route.

Chairman Remian asked CEO Bickford if he had received a copy of the P&S Agreement for Lot 10, which the Board had requested from Mr. Tower. The CEO said he had not and Mr. Tower passed redacted copies to the Board members. The developer confirmed for Mrs. Kalloch that the property had been under contract for nearly a year. He said that, though some information was blocked out, conclusions could be drawn because the property was posted with a sign similar to one on another nearby property. Mr. Remian said he did not see the sale restrictions Mr. Tower had mentioned and the applicant said that page had inadvertently not been copied. He said the major condition was that another house built by the same organization (buyer) must be sold prior to closing this contract; additionally, the soils and site on Lot 10 had to be acceptable. Mrs. Kalloch commented that the proposed closing date of August 2007 seemed reasonable, considering the conditions upon the sale. Mr. Remian told the

CEO that he thought the Board's attorney should look at the P&S Agreement. Mr. Bickford said he could send it to Mr. Cunningham, but it was ultimately the Board's decision.

Mr. Remian said the Board had two additional drawings of the Lot 26 annexation. Mr. Tower stated that there were actually three drawings of Lot 26 before the Board tonight. The first, dated 1/24/07, was developed after the PB vote in January and had been presented in February. It contained the three conditions requested by the Board: 1) buildings were situated above the flood elevation, 2) it included the DEP's approval of a minor modification to make the dimensions consistent with those of the January approval and 3) it included a notation that the driveway to Lot 26 could serve only one lot. The second drawings under consideration, both stamped 4/20/07, showed two different sizes for Lot 10 and contained notations on changes requested to the 1/24/07 drawing at the January meeting. Mr. Tower said that he had since presented the DEP approval to the Board; therefore, the 4/20/07 drawings differed only slightly from the 1/24/07 drawing. The developer displayed the first signed and stamped copy, noting the straight line from the pin on the shore through Lot 10 (1.19 acres) and the retained land of 0.81 acres. On this drawing the last two conditions had been removed because they had been met (DEP approval and the one-lot driveway), he said. While he was at the DEP, Mr. Tower had asked them to conjoin the retained area between Lot 10 and the driveway to Lot 26 to Lot 10, resulting in Lot 10 becoming 2.72 acres and leaving no retained land. This was depicted on the second 4/20/07 drawing.

Mr. Remian stated that the fact that Lot 26 did not front on any road was a problem. Mr. Tower said the town's regulations stated that if a lot fronted on a road it must have frontage; he interpreted this to mean a lot not fronting on a road needed no frontage. The chairman asked the CEO for his interpretation of the frontage requirements as written. CEO Bickford read from Article IX, Subsection 9.2(B), "Each lot on a public or private way serving that a lot shall have a minimum frontage of 150 ft., except that a lesser frontage may be permitted on a cul-de-sac." Mr. Bickford said the Board had required this in other subdivisions. Mr. Ellis said Lot 26 was not on a private way and Mr. Bickford said he believed a driveway qualified as a private way. Mr. Muddle said a driveway was neither a public nor private way. Mr. Ellis stated that, in this subdivision, Ocean Ridge Road was a private way and the driveway to Lot 26 ran off it. He said the PB had made a positive finding of fact on that. Mr. Tower added that a vote of approval had been taken in January after a positive finding of fact on each criterion. He stated that the Board had subsequently decided to reconsider the alternate route only. Mr. Ellis said that a route had to be outside RP to be considered as an alternate. Mr. Tower said he believed the PB had made a positive finding of fact to the effect that he had minimized the impact on RP. Mr. Ellis said he saw no problem with either choice, adding that the small piece was useless as retained land.

Mr. Remian said the ROW was still on the drawings. He then said that Mr. Tower's application letter said there would be no filling, but cuts and fills were shown on the drawings. Mr. Tower said he had added the cuts and fills because they were necessitated by changes the Board had requested. Mr. Remian said that filling on a 45-degree slope was not protecting the area and Mr. Tower said Station 23 was the major area of fill and was transverse to the slope. The chairman said he was not going to argue the point. Mr. Ellis said the Board was here because Rich Baker had asked them to reconsider and that was what they should be doing. It was his opinion that Mr. Baker's suggested route was not an alternative because it was not outside RP, which Mr. Baker said it needed to be.

Mr. Muddle then said that fill and blasting had also been involved in the alternate route, so he did not understand the difference. Mr. Remian said the difference was that the slope was a lot different and he asked if it were not valid to fill for a roadway, why was it valid to fill for a driveway? Mr. Tower asked Mr. Remian if he was aware that the end of Ocean Ridge Road would be lowered approximately 4' so the grade change would be less as the road approached the turn. He said he had addressed the grade change by cutting the end of the road as it existed and filling; as the driveway continued around the corner, the fill ended. Mr. Remian responded by saying he was concerned about fill at the steepest point.

Mr. Muddle said Mr. Baker had charged the Board with deciding what had a lesser impact and his route went through lots and septic systems and was still in RP. Mr. Tower stated that though Mr. Baker's entire route was in RP, in his plan the last 150' of driveway was not in RP. Mr. Ellis asked the developer which plan he preferred and Mr. Tower said he liked the one showing Lot 10 as 2.72 acres. Mrs. Kalloch said that plan would simplify things. Mr. Remian said he showed a lot more fill than had been mentioned.

**ACTION:** Mr. Remian made a motion, seconded by Mrs. Kalloch, to approve this application with the drawing that shows Lot 10 at 2.72 acres with the conditions that the driveway would access Lot 26 only because that was all that was mentioned in the application and with cuts only – no fills – to have less impact on the resource.

Carried 1-3-0 (Mr. Remian voted in favor)

In response to a question from Mr. Muddle, Mr. Tower said the topography of the area would not allow cuts without filling. Mr. Remian asked why it would have allowed it previously and Mr. Tower said the grades were now steeper as a result of shortening the driveway at the PB's request. Mr. Tower stated that the driveway was 487' long. Mr. Muddle asked how long the driveway would need to be to avoid using fill. Mr. Tower said 250' to 300' would need to be added, but regulations prohibited a driveway of more than 500'. Mr. Muddle asked the other members if they would like to consider a waiver. Mr. Tower responded that the Board had already made a positive finding of fact on every criterion, following which Mr. Baker had suggested there was an alternate route. The developer said it seemed that, after the site walk, the PB did not see Mr. Baker's route as viable; therefore, the real consideration was whether Mr. Baker had a viable alternative route. Mr. Ellis said he stood by his vote that the driveway design met the criteria.

Mr. Remian asked Mr. Tower if he could explain how the December 2005 roadway proposal was any different from the current one. The applicant said the difference was mainly in length, thus affecting slope, which affected where it intersected with the side slope of the existing terrain. He said that when he agreed to a compromise the driveway became shorter and steeper and fitted differently into the terrain.

Mr. Muddle said he did not know whether Mr. Baker's route was viable but, based on his interpretation that the PB had to decide between the lesser of two evils, he saw no significant advantage to going through Lot 10. Mrs. Kalloch repeated her concern with the steepness of the slope. Mr. Tower noted that there would be a stone barrier on the steep side of the driveway. He said the motion at hand was to approve something that could not be constructed. Mr. Muddle said it sounded as though the PB would have to allow either extension of the driveway or fill. Mr. Remian pointed out the amount of fill that would have to go in at the steepest point, a 45-degree slope. Mr. Tower said the side slope would be rip rapped with ground rock. He also pointed out more details in response to questions.

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Muddle, to approve the 4/20/07 plan as distinguished by Lot 10 being 2.72 acres.  
Failed 2-2-0 (Mr. Muddle and Mr. Ellis voted in favor)

Chairman Remian suggested Mr. Tower come back with a plan that reduced the impact to the steep slope area. Mr. Tower responded that he had studied the situation repeatedly to determine the best method to access Lot 26 with the least impact; the PB had suggested that a driveway would have less impact because it was 10' narrower, so he had done that. Mr. Remian stated that, based on maps and regulations, Mr. Tower's route was in RP. Mr. Tower noted that the DEP had seen and approved these plans.

The chairman asked if the Board should review the criteria against the new drawings. Mr. Ellis said nothing had changed except the dotted line and Mr. Muddle said the PB had already approved the criteria. Mr. Remian called for a motion and Mr. Muddle said the plan had been designed by a licensed engineer and approved by the DEP. Mr. Tower said he believed that reconsideration was limited to consideration of an alternate route through Lot 10.

**ACTION:** Mr. Ellis made a motion, seconded by Mrs. Kalloch, to accept this drawing as presented with the addition of acreage to Lot 10, resulting in 2.72 acres, with the road as depicted on the plan.  
Carried 3-1-0 (Mr. Remian voted against)

Mr. Muddle asked that the record reflect that his statement, at the April meeting, that the lot dimensions were wrong was incorrect.

**6.Continuation of Robbins Mountain Subdivision Review for Completeness, Map 5, Lots 84, 85 and 86:** *Mr. Cobey returned to the Board and stated that he had no potential conflict of interest in respect to this item on the agenda.* The chairman confirmed that this item would be reviewed under the old versions of both the Shoreland Zone Ordinance and the Subdivision Ordinance. Mr. Cobey clarified that the documents being referred to were the final application to Cushing and the storm water management plan.

Mr. Tower asked Mr. Cobey if he had told the Selectmen he wanted the developer removed from the Ordinance Committee due to bias. Mr. Cobey replied that he had no bias toward the applicant, but he did feel Mr. Tower had a conflict of interest when on the Ordinance Committee. Mr. Cobey stated that his clients had been developers, so he would actually lean toward favoring them. Mr. Tower said he felt Mr. Cobey should step down from consideration of this application.

**ACTION:** Mr. Remian made a motion, seconded by Mrs. Kalloch, that Mr. Cobey be allowed to review this application.  
Carried 4-0-1 (Mr. Cobey abstained)

The chairman asked the Board to go over what it had asked for on the site plan, using Mr. Tower's Plan R-4, stamped 4/18/07. Mr. Cobey said nothing was clear from the point of the entrance road and flood lines were not shown. He suggested using the SW-2 drawing for the contours. Mr. Cobey said he saw no septic on Red Robbins' lot and Mr. Tower said no one knew where it or the well was located. Mr. Remian said, that being the case, there must be a test pit on the lot and the well must be shown.

In answer to a question about an email to Betty Maddox, Mr. Tower said IF&W's specific review comments would be in a later submission. Mr. Cobey said that the DEP mapping of IF&W significant habitats involved the 75' buffer and the 250' for shorebirds. The Board acknowledged a letter from Machias Savings Bank. Mr. Cobey said the storm water approval referred to an attached waiver that was not attached. Mr. Tower explained that that he had amended the storm water application because the wet pond that required the waiver had been removed.

**ACTION:** Mr. Cobey made a motion, seconded by Mr. Remian, to accept the application as complete.  
Carried 5-0-0

The Board began to discuss the review criteria. Mr. Cobey noted there were no lot lines along Pleasant Point Road. He said that some soils type indicators on the storm water plan were incorrect and some were located on the wrong slopes. Mr. Tower said it was difficult to measure slope from contours on aerial photography, but the test pit logs showed a field determination of slope. In response to a question from the chairman, the developer said that the DEP had approved the storm water management plan with the exception of the common area and the scenic character. Mr. Ellis asked Mr. Cobey if he had seen any pollution issues in the storm water report; Mr. Cobey said he had not. Mr. Cobey then mentioned wetlands disturbance and Mr. Tower said the town had no jurisdiction over wetlands, though it did over pollution. Mr. Cobey said the covenants contained confusing language regarding erosion sediment control and Mr. Tower said that was a point well taken.

**ACTION:** Mr. Muddle made a motion, seconded by Mr. Cobey, to table this application.  
Carried 5-0-0

**7. By-laws Changes:** Mr. Remian confirmed that the members had all received copies of the proposed by-laws changes. Mr. Cobey asked if anyone was interested in modifying the changes or wanted time to review them. Mr. Remian said he had found no problems other than a few typos. Mr. Cobey noted a conflict in one note on Page 3, section A2, which needed rewording.

**ACTION:** Mrs. Kalloch made a motion, seconded by Mr. Muddle, to accept the by-laws as modified tonight.  
Carried 5-0-0

**8. Adjournment:** Mr. Remian made a motion, seconded by Mr. Cobey, to adjourn the meeting at 10:15 P.M.  
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey  
Recording Secretary